

# MEMORANDUM

Agenda Item No. 8(J)(1)

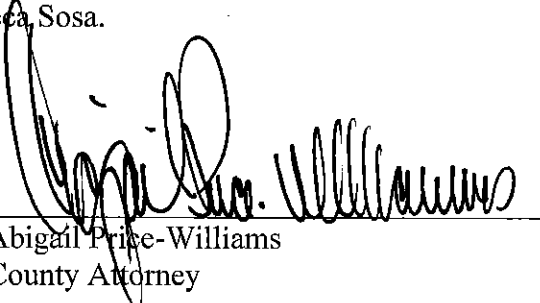
**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** June 5, 2018

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution authorizing execution of Settlement Agreement between Miami-Dade County and Dan Kipnis, Tropical Audubon Society, Inc., Biscayne Bay Waterkeeper, Inc., and Miami-Dade Reef Guard Association, Inc.; authorizing payment of \$50,000.00 to the Miami-Dade County Mooring Buoy Program; conditionally authorizing County grant of up to \$500,000.00 to the University of Miami Rosenstiel School of Marine and Atmospheric Science to fund Outplanting of Acropora (staghorn) colonies; and authorizing the County Mayor to execute Settlement Agreement and to exercise rights conferred therein

The accompanying resolution was prepared by the Port of Miami and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.



Abigail Price-Williams  
County Attorney


APW/cp

# Memorandum

MIAMI-DADE  
COUNTY

Date: June 5, 2018

To: Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

From: Carlos A. Gimenez  
Mayor 

Subject: Resolution Approving the Execution of the Settlement Agreement between Miami-Dade County and Dan Kipnis, Tropical Audubon Society, Inc., Biscayne Bay Waterkeeper, Inc., and Miami-Dade Reef Guard Association to Resolve Claims Alleging Violations of the Endangered Species Act and the Revised Amended Florida Department of Environmental Protection Permit during the Deep Dredge Project

---

## **RECOMMENDATION**

It is recommended that the Board approve the accompanying resolution authorizing the Settlement Agreement between Miami-Dade County and Dan Kipnis, Tropical Audubon Society, Inc., Biscayne Bay Waterkeeper, Inc., and Miami-Dade Reef Guard Association to settle outstanding items related to a civil suit alleging violations of the Endangered Species Act and the Final Florida Department of Environmental Protection Permit during the Deep Dredge Project.

## **SCOPE**

PortMiami is located within District 5. However the impact of this agenda item is countywide as PortMiami ("Port") is a regional asset and generates employment for residents throughout Miami-Dade County.

## **FISCAL IMPACT/FUNDING SOURCE**

Under the Settlement Agreement, the Seaport Department will transfer \$50,000 to the Miami-Dade Mooring Buoy Program, which is managed by the Department of Regulatory and Economic Resources. This transfer of funds will be paid from Seaport Revenues in FY2018.

Additionally, the Settlement Agreement requires the County to enter into a separate Grant Agreement with the University of Miami to fund outplanting of up to approximately 10,000 Acropora (staghorn) coral colonies over a period of three years with one one-year option to renew for a not to exceed amount of \$500,000. This funding will be paid from federal funds authorized through Section 2106 of the Water Resources Reform and Development Act of 2014. The schedule for transfer of funds to the University of Miami will be approximately as follows: FY(2018) - \$164,000, FY(2019) - \$185,000, FY(2020) - \$138,000, and FY(2021) - \$13,000.

The Settlement Agreement will not incur any other annual recurring costs.

## **DELEGATED AUTHORITY**

There are no delegated authorities beyond that specified in the accompanying Resolution, which are the authority for the Mayor or the Mayor's designee to execute the Settlement Agreement in substantially the form attached to the Resolution, and to exercise all County rights therein.

## **TRACK RECORD/MONITOR**

The Seaport Department staff members responsible for monitoring the Settlement Agreement are Elizabeth Ogden, Assistant Director, Capital Development, and Becky Hope, Environmental Manager, Capital Development.

## **BACKGROUND**

In November 2007, Congress approved the Water Resource Development Act of 2007 ("WRDA"), which, among other things, authorized the Deep Dredge Project ("Project"), that deepened the Port's outer and south channel to a controlling depth of minus 50 feet. On March 3, 2009, this Board passed Resolution No. R-203-09, approving a Design Agreement between the United States Army Corps of Engineers ("COE") and the County, under which the County agreed to fund 31.36 percent of the design, environmental permitting, and engineering cost to design and permit the project. On August 31, 2011, the Florida Department of Environmental Protection ("DEP") issued a Notice of Intent to issue a Consolidated Environmental Resource Permit, Associated Variances and State Sovereign Submerged Land Authorizations in connection with the Project (collectively the "DEP Proposed Permit"). The DEP Proposed Permit was publicly noticed with an advertisement in The Miami Herald on September 4, 2011. On November 10, 2011, DEP published an Amended DEP Proposed Permit, which was also publicly noticed with an advertisement in The Miami Herald on November 11, 2011.

On or about November 28, 2011, Dan Kipnis, Tropical Audubon Society, Inc ("Tropical Audubon Society"), and Biscayne Bay Waterkeeper, Inc. ("BB Waterkeeper") filed a petition challenging the Amended DEP Proposed Permit and requesting an administrative hearing under applicable Florida Statutes. Because the United States Army Corps of Engineers was the Permit applicant, the County was not initially a party to the administrative proceeding. On December 19, 2011, the Board authorized taking all actions necessary to intervene in the administrative proceedings through the passage of Resolution No. R-06-12. Thereafter, the County intervened as authorized. On or about May 1, 2012, this Board passed Resolution No. R-422-12, authorizing the execution of a settlement agreement ("2012 Settlement Agreement") that authorized placement of \$1,310,000 into the Miami-Dade County Biscayne Bay Environmental Enhancement Trust Fund, and a donation of \$100,000 in aggregate to Tropical Audubon Society and BB Waterkeeper in exchange for dismissal of the claims and release of all actions, challenges and objections to the Project. On May 22, 2012, DEP issued a final permit for the Project (the "Final DEP Permit").

On or about July 17, 2012, through Resolution No. R-650-12, the Board authorized the County to execute a Project Partnership Agreement with the COE for the construction of the Project, post-construction environmental monitoring and regulatory requirements, and the County's issuance of port revenue bonds to finance part of the Project. The County executed the Project Partnership Agreement as authorized.

The COE's dredging contractor, Great Lakes Dredge and Dock, commenced dredging operations in November of 2013. The Project was completed in September of 2015.

On or about July 16, 2014, Dan Kipnis, Tropical Audubon Society, BB Waterkeeper, the Miami-Dade Reef Guard Association ("Reef Guard"), Coral Morphologic, and the Sierra Club Miami Group ("Sierra Club") submitted a statutorily-required pre-suit Notice Letter to the U.S. Department of the Army, Great Lakes Dredge and Dock, among others, threatening to seek injunctive relief under the Endangered Species Act ("ESA") and the Revised Amended DEP Proposed Permit if the COE failed to cease certain Project related dredging activities within 60 days. Subsequently, Dan Kipnis, Tropical Audubon Society, BB Waterkeeper, and Reef Guard filed a civil suit against the COE in federal court seeking preliminary and permanent injunctive relief alleging COE violations of the ESA and the Final DEP Permit. The County was not a defendant in this litigation.

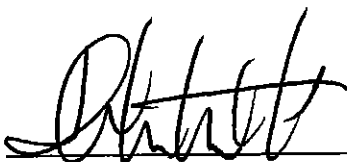
On May 11, 2015, the district court dismissed Dan Kipnis, Tropical Audubon Society, and BB Waterkeeper from the suit on the grounds that their asserted claims against the COE had each previously been waived and released through the County's 2012 Settlement Agreement and required Reef Guard to issue an Amended Complaint for suit. Reef Guard's Amended Complaint was filed on June 22, 2015. On October

13, 2015, the district court dismissed Reef Guard's state and DEP claims, leaving only its asserted ESA claims against the COE.

By Joint Motion dated November 30, 2015, Reef Guard and the COE asked the court to temporarily stay the case to participate in mediation. Such mediation included the COE, Dan Kipnis, Tropical Audubon Society, BB Waterkeeper, Reef Guard, and the County. Though not a party to the civil suit, the County was requested to participate in the mediation by both the plaintiffs and the COE. The County has an interest in the outcome of the pending federal ESA litigation against the COE as a resulting adverse judgment against the federal government could increase project costs. Such potential increased costs would likely result in the COE making a demand upon the County for additional reimbursements under the terms of the Project Partnership Agreement. As a result of the negotiations at mediation, the parties have reached this settlement. Dan Kipnis, Tropical Audubon Society, BB Waterkeeper, and Reef Guard have agreed to dismiss, with prejudice, the civil lawsuit and any and all federal, state and any other existing and future claims, actions, suits, and appeals with regards to the civil suit or the Project, and will execute releases providing for same. In exchange, the County has agreed to the transfer of \$50,000 from the Seaport Department to the Miami-Dade Mooring Buoy Program, and, subject to separate Board approval, execution of a Grant Agreement with the University of Miami, to propagate, maintain, outplant, and monitor 10,000 *Acropora cervicornis* (staghorn) coral colonies over a period of three years with one one-year option to renew for a maximum amount of \$500,000.

Though not parties to the civil suit, two of the parties to the pre-suit Notice Letter, Sierra Club and Coral Morphologic, are not signatories to this Settlement Agreement. The Sierra Club, however, signed a release effective upon approval of the Settlement Agreement by the Board and execution of the Settlement Agreement by the Mayor or his designee. Such release provides that Sierra Club waives all claims in its pre-suit Notice Letter as well as any and all other claims existing as of the effective date of its release. Coral Morphologic has not provided a release of claims. Nonetheless, this settlement is still within the best interest of the County because the risk is low that Coral Morphologic will file a successful lawsuit on this issue since the project was completed over two and a half years ago, the principal issues raised in the pending suit have become moot, and Coral Morphologic has taken no action to prosecute its previously noticed claims. Accordingly, should Coral Morphologic subsequently seek to assert alleged rights against the COE, it would be subject to numerous defenses, including laches, statute of limitations, waiver, mootness, etc. Furthermore, the County has received letters from counsel for Dan Kipnis, Tropical Audubon Society, BB Waterkeeper, and Reef Guard that due to existing conflicts of interest, they and their firms will not represent Coral Morphologic in pursuing claims referenced in the July 16, 2014 pre-suit Notice Letter.

In sum, the proposed settlement will resolve almost four years of ongoing dredging litigation against the COE and substantially limit the COE's exposure to ESA-related project cost increases. By limiting the COE's exposure to potential project cost increases, the settlement also reduces the County's potential exposure to the COE under the Project Partnership Agreement. For this reason, and as the majority of the settlement amount will be funded by federal funds authorized through Section 2106 of the Water Resources Reform and Development Act of 2014, staff deems the proposed settlement to be in the best interests of the County.



Jack Osterholt  
Deputy Mayor

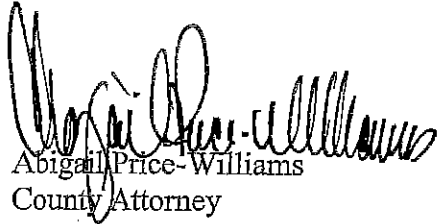


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Esteban L. Bovo, Jr.  
and Members, Board of County Commissioners

**DATE:** June 5, 2018

**FROM:**   
Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 8(J)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(J)(1)  
6-5-18

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING EXECUTION OF SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND DAN KIPNIS, TROPICAL AUDUBON SOCIETY, INC., BISCAYNE BAY WATERKEEPER, INC., AND MIAMI-DADE REEF GUARD ASSOCIATION, INC.; AUTHORIZING PAYMENT OF \$50,000.00 TO THE MIAMI-DADE COUNTY MOORING BUOY PROGRAM; CONDITIONALLY AUTHORIZING COUNTY GRANT OF UP TO \$500,000.00 TO THE UNIVERSITY OF MIAMI ROSENSTIEL SCHOOL OF MARINE AND ATMOSPHERIC SCIENCE TO FUND OUTPLANTING OF ACROPORA (STAGHORN) COLONIES; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SETTLEMENT AGREEMENT AND TO EXERCISE RIGHTS CONFERRED THEREIN

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board:

**Section 1.** Approves the execution of the Settlement Agreement between Miami-Dade County and Dan Kipnis, Tropical Audubon Society, Inc., Biscayne Bay Waterkeeper, Inc., and Miami-Dade Reef Guard Association, Inc.

**Section 2.** Authorizes the transfer of \$50,000.00 from the Miami-Dade County Seaport Department into the Miami-Dade County Mooring Buoy Program and authorizing the expenditure of those funds for the Mooring Buoy Program.

**Section 3.** Authorizes a County grant of up to \$500,000.00 to the University of Miami Rosenstiel School of Marine and Atmospheric Science to fund the outplanting of Acropora (staghorn) colonies via and subject to this Board's prior approval of a separate County grant agreement with the University of Miami Rosenstiel School of Marine and Atmospheric Science regarding same.

**Section 4.** Authorizes the Mayor or Designee to execute the Settlement Agreement, and to exercise the County rights conferred therein.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Esteban L. Bovo, Jr., Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Daniella Levine Cava	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
District 5 - Vacant	

The Chairperson thereupon declared the resolution duly passed and adopted this 5<sup>th</sup> day of June, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

CWP for

Steven B. Bass



## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and among claimants Mr. Dan Kipnis, Tropical Audubon Society, Inc. ("TAS"), Biscayne Bay Waterkeeper, Inc. (a/k/a Miami Waterkeeper) (hereafter, "BBWK"), and Miami-Dade Reef Guard Association ("Reef Guard") (collectively, "Claimants"), and Miami-Dade County ("County"), a political subdivision of the State of Florida.

### WITNESSETH

WHEREAS, the County owns and operates the Dante B. Fascell Port of Miami-Dade ("Port" or "POM"); and

WHEREAS, in 2007, Congress authorized the Miami Harbor to be deepened to a depth of -52'/-50' MLLW plus wave allowances and allowable over-depth (the "POM Deepening Project" or "Project"); and

WHEREAS, in April 2011, the Project's federal sponsor, the U.S. Department of the Army, through the Army Corps of Engineers ("COE"), sought certain approvals from the Florida Department of Environmental Protection ("DEP") in connection with the Project, including the submission of a detailed application and substantial support documents to DEP in support of the Project and the sought DEP approvals; and

WHEREAS, on or about August 31, 2011, DEP issued a Notice of Intent to issue the COE a Consolidated Environmental Resource Permit, Associated Variances and State Sovereign Submerged Land Authorizations in connection with the Project (collectively, the "Proposed Permit"), which Proposed Permit was advertised in the Miami Herald on September 4, 2011; and

WHEREAS, on or about November 10, 2011, DEP published on its website an Amended Proposed Permit, which Amended Proposed Permit was advertised in the Miami Herald on or about November 11, 2011; and

WHEREAS, on or about November 28, 2011, BBWK, Dan Kipnis, and TAS (the "DOAH Petitioners") filed a petition challenging the Amended Proposed Permit and requesting an administrative hearing under Florida Statutes Sections 120.569 and 120.57 (the "Petition"), which the DOAH Petitioners later amended (the "Amended Petition"); and

WHEREAS, the DOAH Petitioners and the County entered into a written settlement agreement on or about May 16, 2012, in which for valuable consideration received, the DOAH Petitioners forever waived and released all actions, challenges, and objections relating in any way to the Project, the Permit, the Amended Permit, and/or Revised Amended Proposed Permit, including, without limitation, all then-current and future challenges, appeals, and/or objections to the Project, the Revised Amended Proposed Permit and/or the disposition of the Petition; and

WHEREAS, on or about July 16, 2014, counsel for the Claimants submitted a statutorily-required pre-suit Notice Letter to the U.S. Department of the Army, Great Lakes Dredge and Dock Corporation, various agencies, and County, among others, threatening to seek injunctive relief under the Endangered Species Act ("ESA") and the Revised Amended Proposed Permit if the COE failed to cease certain Project related dredging activities within sixty (60) days; and

WHEREAS, the Claimants later filed a civil suit against the COE in federal court seeking preliminary and permanent injunctive relief alleging COE violations of the ESA and the Revised Amended Proposed DEP Permit; and

WHEREAS, on motion of the COE, the district court later (i) dismissed each of the three DOAH Petitioners from the suit on the ground that their asserted claims against the COE had each previously been waived and released and (ii) as to Reef Guard – the lone remaining federal suit plaintiff – dismissed all asserted state and DEP claims as well as a portion of Reef Guard's asserted ESA claim (which, the District Court ruled, had not been included in Reef Guard's statutorily-required pre-suit notice letter); and

WHEREAS, the COE, the Claimants (through their counsel), and non-party County have participated in a court ordered mediation and now wish to settle their disputes as set out below, with no admission of liability, fault, or violation of any statutory, permit, or other requirements of any kind;

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions set forth herein, the County and each of the Claimants hereby agree as follows:

## ARTICLE I

### DEFINITIONS

1.1 Definitions. Except as specifically provided elsewhere herein, capitalized terms used herein shall have the meaning set forth below:

"Claimants" shall mean Mr. Dan Kipnis, TAS, BBWK, and Reef-Guard (individually and collectively and on behalf of their officers, directors and employees).

"COE Fee Agreement" shall mean a written agreement among the COE and each of the Claimants resolving and requiring the dismissal with prejudice of the Federal Action and any actions or claims that were, could have been or still could be asserted therein and addressing any agreement on legal fees reached between the COE and the Claimants.

“County” shall mean Miami- Dade County, a political subdivision of the State of Florida.

“County Cost Cap” shall have the meaning set forth in Section 2.2 hereof.

“DEP” or “Department” shall mean the Florida Department of Environmental Protection.

“Petitioners” shall mean, both individually and collectively, TAS, BBWK, and Dan Kipnis, and their respective successors, agents, affiliates, and assigns.

“Effective Date” shall mean the date by which Claimants’ Counsel James Porter receives written notice from the County that (i) this Agreement has been approved by the Board of County Commissioners of Miami-Dade County and the Agreement has been executed by the County Mayor (or his designee) and by all respective parties, and (ii) that the RSMAS Contract has been executed by RSMAS and the County, and by which Claimant’s Counsel James Porter provides written notice to the County (to the attention of the Port Director and Becky Hope) that the COE Fee Agreement has been fully executed by the COE and all Claimants or their respective legal representatives, which notice shall attach a fully executed copy thereof.

“Environmental Mitigation Grant Agreement” shall have the meaning set forth in Section 2.2 hereof.

“Federal Action” shall mean *Biscayne Bay Waterkeeper, Inc., Dan Kipnis, Miami-Dade Reef Guard Association, and Tropical Audubon Society, Inc. v. United States Army Corps of Engineers*, 14-civ-23632-FAM (S.D. Fla.).

“Federal Claimants” shall mean Dan Kipnis, TAS, BBWK, and Reef Guard.

“Final Permit” shall mean the final Permit and water quality certification waiver issued by DEP to the COE in connection with the Project.

“Petition” shall mean the DOAH Petitioners’ Petition and Amended Petition challenging the issuance of the Amended Proposed Permit for the Project, filed by Petitioners on or about November 28, 2011 and December 11, 2011, respectively, and the subject of DOAH Case No. 11-6242 and OGC 11-1319.

“Project” shall have the meaning provided in the second recital paragraph of this Agreement and shall include all work and mitigation required, performed, or associated therewith.

“Releasors” shall include each and all Claimants.

“Revised Amended Proposed Permit” shall have the meaning provided in Section 2.1 of the May 16, 2012 Settlement Agreement referenced in the 8th recital clause above.

“Environmental Mitigation Grant Agreement” shall have the meaning provided in Section 2.2 hereof.

1.2 Rules of Construction. Unless the context clearly indicates otherwise:

(a) words in the singular include the plural, and words in the plural include the singular;

(b) a pronoun in one gender includes and applies to the other gender as well;

(c) all references to Articles and Sections shall refer to this Settlement Agreement, unless clearly stated otherwise; and

(d) the terms “hereof”, “hereto”, “herein”, “hereunder” and comparable terms refer to this entire agreement and not to any particular article, section or other subdivision thereof unless expressly provided otherwise.

1.3 Term. Unless otherwise provided herein, the provisions and obligations contained in this Agreement shall expire ten years from the Effective Date hereof.

1.4 Recitals. The Whereas clauses at the beginning of this Agreement are hereby ratified and incorporated by reference herein.

1.5 Express Third Party Beneficiaries. The United States (including the COE and its employees, contractors, and subcontractors) are express and intended third party beneficiaries to this Agreement for purposes of Section 3.2 hereof.

## ARTICLE II COUNTY COMMITMENTS

2. County Commitments. As consideration for this Settlement Agreement, including, without limitation, the irrevocable and fully effective releases provided herein from each of the Releasors, the County agrees to make the following two donations and/or financial commitments, both of which are anticipated to better enhance, restore, and protect Miami-Dade coral reef systems and hard bottom marine habitats and benthic communities, reduce future anchor-related reef damage, and create and enhance opportunities for education and research in the areas of coral and marine science.

2.1 County Donation of Fifty Thousand Dollars (\$50,000.00) to the Miami-Dade Mooring Buoy Program. Within thirty (30) calendar days following the date by which (i) Claimants each dismiss with prejudice any and all federal, state, and other claims that any or each of them asserted, could have asserted, or could seek to add or assert (with leave of court) now or in the future in the pending Federal Action or otherwise, and (ii) all Releasors fully and properly execute and deliver to the County their respective General Releases, but not prior to the Effective Date, the County shall deposit or transfer \$50,000.00 into the Miami-Dade Mooring Buoy program fund to be used to procure and install new anchor buoys (in a number to be

determined by the County in its sole discretion) and/or to maintain new and/or existing mooring buoys. To the extent the County administrators of the Miami-Dade Anchor Buoy Program opt to use part of these funds to procure new anchor buoys, the Port will request that several of the new anchor buoys be placed at or near several of the out-plant sites contemplated herein.

2.2 County Entry into Environmental Mitigation Grant Agreement with RSMAS. Within thirty (30) calendar days following the date by which (i) the Claimants each dismiss with prejudice any and all federal, state, and other claims that any or each of them asserted, could have asserted, or could seek to add or assert (with leave of court) now or in the future in the pending Federal Action or otherwise, and (ii) all Releasers fully and properly execute and deliver to the County their respective General Releases, but not prior to the Effective Date, the County shall enter into a written environmental mitigation grant agreement with the University of Miami Rosenstiel School of Marine and Atmospheric Science ("RSMAS"), in an amount not to exceed \$500,000.00 (the "County Cost Cap"), and in substantially the form attached hereto as Exhibit A, to procure the propagation, maintenance, outplanting, and monitoring of 10,000 staghorn colony fragments at outplant sites selected by the County from a list of outplant sites previously approved by the Florida Fish and Wildlife Commission and for such other purposes as may be set forth therein (the "Environmental Mitigation Grant Agreement"). The outplanting and associated work to be required in the Environmental Mitigation Grant Agreement (excluding a portion of the required post-outplanting monitoring services) is anticipated to take place over an approximately three year period from the effective date of the Environmental Mitigation Grant Agreement. For avoidance of doubt, the parties hereto agree that the aforementioned Environmental Mitigation Grant Agreement shall not require the County to expend in excess of the County Cost Cap under any circumstances. Funds that (a) permanently and irrevocably revert to the County under Article VII of the Environmental Mitigation Grant Agreement; or (b) are permanently and irrevocably reimbursed by RSMAS to the County under Article XV of the Environmental Mitigation Grant Agreement; or (c) are permanently and irrevocably reimbursed by RSMAS to the County under Article XXII of the Environmental Mitigation Grant Agreement, shall be used to fund one or more of the existing, permitted projects under the Miami-Dade Artificial Reef Program. If applicable, the funds permanently and irrevocably reimbursed to the County by RSMAS under the Environmental Mitigation Grant Agreement, if any, shall be transferred by the County from the Seaport to the Miami-Dade Artificial Reef Program and be used by the County to fund existing permitted projects within the County's Artificial Reef Program (as such permits may be renewed or modified from time to time), provided, however, under no circumstances may the total of all sums spent by the County under this Agreement or the Environmental Mitigation Grant Agreement, or under both agreements exceed five hundred and fifty thousand dollars (\$550,000.00) in aggregate.

### ARTICLE III

#### FEDERAL CLAIMANTS' DISMISSAL OF FEDERAL ACTION WITH PREJUDICE AND CLAIMANTS' ISSUANCE OF GENERAL RELEASES

3.1 Dismissal of Federal Action with Prejudice/Release of Claims. Within five calendar days of the Effective Date, and in consideration of the County undertaking the various financial commitments set forth in Article II above, each of the Claimants shall dismiss, with

prejudice, the Federal Action and any and all federal, state, and other claims, actions, suits, and appeals that any or each of them asserted or filed, could have asserted or filed, or could have sought to add, assert, or file (with leave of court or otherwise) now or in the future in the pending Federal Action or otherwise. The obligations, waivers, and releases in this section shall survive the expiration of this Agreement.

3.2 Releases by Releasers. As of the Effective Date hereof, each of the Releasers hereby forever and irrevocably waives, discharges, extinguishes, and releases all existing and future claims, actions, suits, challenges, appeals, requests for hearing, and administrative hearings of any kind or nature, at law or equity, arising from, associated with, or relating in any way to the Federal Action, the Project or any portion of the performance thereof, the Final Permit, or any other permit, license, mitigation or purportedly needed approval associated with the Project, or any Uniform Mitigation Assessment Method ("UMAM") or other evaluation or analysis conducted in connection with the Project or the Final Permit, expressly including, without limitation, any and all federal, state, and other claims, suits, actions, appeals, challenges, requests for hearing, and/or administrative hearings and actions of any kind, under any statute, rule, permit, and/or common law theory or otherwise, whether now existing or arising in the future, choate or inchoate, known or unknown. For avoidance of doubt, the Releasers do not hereby release their respective potential future claims (if any) for breach of this Agreement by the County. The obligations, waivers, and releases in this section shall survive the expiration of this Agreement.

3.3 Releasers' Covenant Not to Sue. Releasers each hereby irrevocably agree not to file any petition, suit, claim, hearing request, or action with or against the State of Florida, DEP, the County, the COE, or any other agency, court, or third-party, nor to seek any administrative or other hearing from DOAH or any other local, state, or federal agency or court, challenging or objecting to, in whole or in part, any results of any DEP Uniform Mitigation Assessment Method ("UMAM") analysis, proposed UMAM analysis, or any other analysis, evaluation, or assessment undertaken (or proposed to be undertaken) to determine whether any additional mitigation is or may be required by any party or non-party hereto as a result of or in connection with the Project or any actions or omissions undertaken or associated therewith. This Covenant does not apply to and does not prevent the Releasers from commenting on, discussing, or reviewing any publicly available and non-privileged proposal, study, survey, data, or report prepared on or on behalf of NOAA, DEP, COE, or the County or any of the aforementioned's contractors or subcontractors relating to the Project. This obligation and covenant shall survive the expiration of this Agreement.

#### ARTICLE IV

#### CLAIMANTS' REPRESENTATIONS AND ACKNOWLEDGMENTS

4.1 Acknowledged Value of County's Mooring Buoy Donation. Releasers acknowledge and agree that the \$50,000 donation to be made by the County to the County's Mooring Buoy Program (to be allocated in the County's discretion between procurement of new buoys and funding maintenance of new and/or existing buoys) will benefit and protect reef habitat and benthic communities by reducing future reef and benthic damage historically caused

by marine vessel anchoring. To the extent the County administrators of the Miami-Dade Anchor Buoy Program opt to use part of these funds to procure new anchor buoys, the Port will request that several of the new anchor buoys be placed at or near several of the out-plant sites contemplated herein.

4.2 Acknowledged Value of County's Commitment to Fund RSMAS' Staghorn Outplanting Subject to County Cost Cap. Releasors hereby acknowledge and agree that the County's commitment herein to the enter into the Environmental Mitigation Grant Agreement, which is anticipated to result in up to 10,000 staghorn outplants, to be arranged in dense plots among various Miami-Dade locations pre-approved by the Florida Fish and Wildlife Commission, will greatly enhance Miami-Dade reefs and benthic communities by creating substantial new reef structures and diversity; will create thousands of coral structures that will attract and protect other marine organisms and thereby promote biodiversity; will substantially enhance opportunities for the outplanted staghorns to reproduce both sexually and asexually in and around other hard bottom areas deemed capable of supporting staghorns; and will also provide and promote numerous coral and marine science educational and research opportunities. Releasors further represent and acknowledge that the staghorn outplanting and associated work contemplated herein and in the Environmental Mitigation Grant Agreement is consistent with the scope of work and RSMAS' authorizations to work with staghorn coral as set forth in its Florida Fish and Wildlife Conservation Commission Special Activity License (re staghorn harvesting, fragmenting, relocation, outplanting etc.) and otherwise.

## ARTICLE V MISCELLANEOUS

6.1 Warranty. Releasors each represent and warrant that neither has heretofore assigned or transferred or purported to assign or transfer to any person or entity all or any part of any right or interest in or relating to the Federal Action, the Project or any right, action, suit or claim released or purported to be released herein.

6.2 Authority. Releasors and County (upon approval of this Settlement Agreement by the Board of County Commissioners of Miami-Dade County and subsequent execution by the County Mayor or his designee) represent and warrant that each is authorized to enter into this Settlement Agreement, that it is duly and validly executed, legally binding and enforceable against all Petitioners and the County.

6.3 Fees & Costs. Releasors acknowledge and agree that the County has no obligation herein or otherwise to pay any legal fees or costs of any kind that may have been incurred by or on behalf of any or all of Claimants or their counsel in connection with the Federal Action, the Project or any claim, suit, action, notice, demand, or objection relating to the Project, or otherwise. Notwithstanding the foregoing, each of the Claimants hereby irrevocably waives any claim and potential claim for legal fees or costs it has, had, or may have in the future against the County or any of the County's agents or contractors (of any tier) arising out of the Federal Action or relating to the Project or any Project related permit.

6.4 Amendments. No change, amendment or modification of this Settlement Agreement shall be valid or binding upon the parties hereto unless such change, amendment or modification shall be in writing and duly executed by the parties hereto and, in the case of the County, be approved by the Board of County Commissioners.

6.5 Assignment. This Settlement Agreement may be assigned to parties, other than the parties to this Settlement Agreement, only upon the prior written consent of the other parties hereto.

6.6 Governing Law. This Settlement Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Florida.

6.7 Exclusive Venue/Enforcement. Venue for any court action arising from, relating to, or to enforce any term or provision hereof, shall lie exclusively in Miami, Dade County, Florida. This Settlement Agreement may be enforced in the Miami-Dade County Circuit Court

6.8 Severability. If one or more of the provisions contained in this Settlement Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.

6.9 Successors and Assigns. This Settlement Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and permitted assigns (if any).

6.10 Counterparts. This Settlement Agreement may be signed in any number of counterparts, each of which shall be an original and all of which shall represent but one agreement.

6.11 Entire Agreement. This Settlement Agreement constitutes the entire agreement among the parties with the respect to the subject matter addressed herein.

6.12 Construction. As all parties to this Agreement were represented by counsel, and as the language contained herein was the product of negotiation by all such represented parties, this Settlement Agreement shall not be deemed or treated as a contract of adhesion, nor shall any of its terms be construed against the drafter thereof.

6.13 Force Majeure. The County shall not be deemed in breach of any term, provision, or obligation contained herein if the failure to perform such obligation was prevented or impaired by any act of God, war, insurrection, natural disaster, fire, flood, hurricane, tornado, earthquake, or other natural phenomenon or severe weather, strikes or lockouts, or by shortages of labor, materials, or equipment, or other obstacles due to factors or circumstances beyond the reasonable control of the County. In the event RSMAS fails to perform or complete the work described in the Environmental Mitigation Grant Agreement as a result of any act of God, war, insurrection, natural disaster, fire, flood, hurricane, tornado, earthquake, or other natural phenomenon or due to strikes or lockouts beyond the reasonable control of RSMAS and its affiliates, agents, and subcontractors (of any tier), and in the event RSMAS informs the County in writing within



fifteen (15) calendar days of such alleged force majeure event that RSMAS can no longer complete all remaining work under said Environmental Mitigation Grant Agreement due to the alleged force majeure event(s), and such noticed force majeure events result in the County permanently retaining an unused grant balance, that has neither been spent by the County nor is owed by the County under the Environmental Mitigation Grant Agreement or otherwise, then in such event the County shall transmit the permanently remaining, unused and unowed grant balance to the County's Artificial Reef Program to be used to fund existing permitted projects thereunder as such permits may be renewed or modified from time to time, provided, however, under no circumstances may the total of all sums spent by the County under this Agreement or the Environmental Mitigation Grant Agreement, or under both agreements, exceed five hundred and fifty thousand dollars (\$550,000.00) in aggregate.

6.14 Assumption and Acknowledgment of Inherent Outplanting Risks. Releasors acknowledge that outplanting staghorn colonies is subject to numerous unavoidable risks, both naturally occurring and man-made, including, without limitation, the risks that staghorn outplants may be subject to partial or full mortality due to disease, warm water, the effects of climate change, predation, storms, acidification, pollution, runoff, naturally-occurring sedimentation, anchor damage, direct damage or breakage caused by fishing, etc. Releasors enter into this Settlement Agreement acknowledging and accepting these inherent and unavoidable risks. Releasors further acknowledge and accept that there are no assurances offered herein or otherwise that the staghorn corals at issue in this Agreement will survive for any period of time after the outplanting to be required by RSMAS under this Agreement, and further acknowledge that many or all may die due to one or more of the various known risks listed above, or others, and that, in such event, Releasors shall hold the County, the COE, and RSMAS harmless for same.

6.15 No County Vicarious Responsibility or Other Liability for Acts and/or Omissions of Releasors or RSMAS. Notwithstanding and prevailing over any contrary term or implication contained in this Agreement or the Environmental Mitigation Grant Agreement, under no circumstances shall the County be vicariously responsible or otherwise liable to any Claimants, releasors, or others for any act or omission, any statutory, permit, or other violation, or any breach of the Environmental Mitigation Grant Agreement by RSMAS or any of RSMAS' employees, agents, officers, contractors, or subcontractors (of any tier). Releasors all further agree that any breach of the Environmental Mitigation Grant Agreement by RSMAS or any of RSMAS' employees, agents, officers, contractors, or subcontractors (of any tier) shall not constitute or be deemed a breach by the County of this Agreement or the Environmental Mitigation Grant Agreement. Releasors also hereby acknowledge and agree that they are not parties to the Environmental Mitigation Grant Agreement, nor third party beneficiaries thereto; and, as such, Releasors have no legal or other rights herein or otherwise to enforce, sue upon, or seek declaratory or other relief on or in connection with the Environmental Mitigation Grant Agreement.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Settlement Agreement as of the date first written above.

*Allen Torres*  
Witness

**Tropical Audubon Society, Inc.**

By: *[Signature]*  
President *JOSE FRANCISCO BARRIOS*

**Biscayne Bay Waterkeeper, Inc.**

By: \_\_\_\_\_  
Rachel Silverstein, PhD, Executive Director

\_\_\_\_\_  
Witness

**Dan Kipulis**

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

**Miami-Dade Reef Guard Association, Inc.**

By: \_\_\_\_\_  
President


\_\_\_\_\_  
Witness

IN WITNESS WHEREOF, the Parties hereto have duly executed this Settlement Agreement as of the date first written above.

**Tropical Audubon Society, Inc.**

By: \_\_\_\_\_  
President

**Biscayne Bay Waterkeeper, Inc.**

By:  \_\_\_\_\_  
Rachel Silverstein, Ph.D., Executive Director

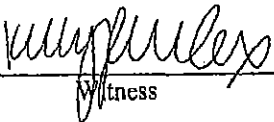
**Dan Kipnis**

By: \_\_\_\_\_

**Miami-Dade Reef Guard Association, Inc.**

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

IN WITNESS WHEREOF, the Parties hereto have duly executed this Settlement Agreement as of the date first written above.

**Tropical Audubon Society, Inc.**

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Witness

**Biscayne Bay Waterkeeper, Inc.**

By: \_\_\_\_\_  
Rachel Silverstein, PhD, Executive Director

\_\_\_\_\_  
Witness

**Dan Kipnls**

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

**Miami-Dade Reef Guard Association, Inc.**

By: \_\_\_\_\_  
President

*[Handwritten Signature]*  
\_\_\_\_\_  
Witness



EXHIBIT "A"

MIAMI-DADE COUNTY/UNIVERSITY OF MIAMI  
GRANT AGREEMENT

Miami-Dade County, a political subdivision of the state of Florida ("County" or "Grantor") and University of Miami ("Grantee"), on behalf of its Rosenstiel School of Marine and Atmospheric Science ("RSMAS") hereby enter into the instant grant agreement ("Agreement") on this \_\_\_ day of \_\_\_\_, 2017 ("Effective Date"), pursuant to the terms, conditions, schedules, and other requirements set forth below.

WHEREAS, RSMAS operates a licensed salt water coral nursery in Miami-Dade County and has experience in propagating, maintaining, outplanting, and monitoring certain species of corals, including *Acropora cervicornis*; and

WHEREAS, Miami-Dade County seeks to provide grant funding in the amount of \$499,974 to Grantee for RSMAS to propagate, maintain, outplant, and monitor 10,000 *Acropora cervicornis* (staghorn) colonies (of various and distinct genotypes) to numerous designated off-shore sites within Miami-Dade County ("Project"), in compliance with certain licenses and permits either currently held or to be obtained by RSMAS, subject to completion of all Grantee's Requirements set forth herein; and

WHEREAS, Grantee agrees and represents that the initial planting of 10,000 staghorn outplants by RSMAS, as described above, is intended to increase reef structure and function, reef growth, fisheries habitat, coastal buffering, and biodiversity; and

WHEREAS, RSMAS represents that it is able to propagate, maintain, outplant, and monitor 10,000 staghorn colonies pursuant to this \$499,974 grant ("Grant") from Miami-Dade County; and

NOW, THEREFORE, in consideration of the promises, terms, and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions set forth herein, the County and Grantee agree as follows:

**Article I – Incorporation of Recitals:**

Each of the recital paragraphs set forth above is hereby incorporated into this Agreement.

**Article II – Maximum Grant Amount:**

Notwithstanding and prevailing over any contrary term or implication that may be contained herein, this Grant shall not exceed \$500,000 under any circumstances. Grantee cannot seek additional funds for this Project by the execution of a separate agreement with the County or by any other method. No disbursements will be due under this Agreement to Grantee unless and until all pre-conditions and milestone requirements set forth or referenced herein are fully satisfied and, if satisfied, shall be disbursed in accordance with and subject to the Milestone Schedule, attached as

23

Attachment A to this Agreement. No disbursements are authorized hereunder unless and until this Agreement is first approved by the County Commission and thereafter executed by the County Mayor or his designee.

**Article III – Grantee Responsibilities and Scope of Work:**

Grantee shall perform all of the following tasks and work elements, and all work and services required to perform same, using science-based reef restoration best practices to propagate, grow, and maintain sufficient staghorn corals (*Acropora cervicornis*) at in-water coral nurseries, to provide a source of 10,000 healthy staghorn coral colonies to be used for outplanting, and to harvest, transport, and outplant 10,000 staghorn healthy and disease-free staghorn colonies onto reefs of Miami-Dade County over a period of 3 years, and to monitor same, as required by applicable licenses and permits, including, without limitation, provision of all needed or required labor, supervision, materials, equipment, supplies, transportation, and facilities to perform and complete all of the following Project Tasks:

1. Recruit, hire, train, and supervise Project staff in sufficient numbers to timely accomplish all work and deliverables required herein;
2. Apply for, obtain and maintain all permits and licenses that may be required to perform any services required herein, including, without limitation, the Florida Fish and Wildlife Conservation Commission (FWC) Special Activity License and the National Park Service (NPS) permit (if required).
3. Use and expand existing coral stocks to propagate, supply, install, monitor, and maintain sufficient staghorn coral fragments (> 5 cm in Total Linear Extension, TLE) from at least 20 distinct coral genotypes to be placed in salt-water nurseries, monitored and maintained for propagation and coral outplanting to ensure that at least 10,000 live, healthy, disease-free, and otherwise eligible propagated staghorn colonies of suitable size (>10 cm TLE) and condition are available for outplanting;
4. Provide, install, and maintain coral nursery structures (both existing and additional) as needed to support propagation and maintenance of sufficient staghorn colonies to meet all outplant requirements set forth herein;
5. Provide a source of corals to outplant 10,000 staghorn colonies, including:
  - a. Building and installing additional "coral trees" at RSMAS nurseries to accommodate new staghorn fragments; and
  - b. Cleaning nursery structures monthly to remove fouling organisms such as mollusks, sponges, algae, hydroids, etc.; and
  - c. Perform all other needed maintenance to ensure healthy propagation of staghorns in coral nurseries.
6. Select 5 reef sites within Miami-Dade County for outplanting based on the following criteria, and subject to the County's written approval:
  - a. Current or historical presence of *A. cervicornis*
  - b. Adequate space free from competitors (i.e., gorgonians, sponges, zoanthids, macroalgae)
  - c. No evidence of coral disease at site
  - d. Appropriate depth (15-30 ft) and substrate type (i.e., hard, stable substrate with low occurrence of rubble)
  - e. Authorized by required licenses and permits (as applicable) and approved

24



by designated County Seaport staff

7. Ensure that nursery corals selected for outplanting adhere to coral visual health assessments outlined by FWC SAL standards and protocols (i.e., no visible signs of disease or lesions) to maximize coral survival after outplanting;
8. Establish circular plots (12-15 m in diameter) within each site where 2,000 corals (per site) will be deployed (see attached schematic);
9. Outplant groups of 5 staghorn corals within plots by securing corals with small cable ties to masonry nails hammered into the reef substrate, reaching an average density of 4 corals m<sup>-2</sup> within each plot (see attached schematic);
10. Monitor all outplant sites at 1 month and again between 6-12 months post-outplanting (or as may be more frequently required by permitting or licensing authorities) and at each monitoring interval document attachment success and coral survival as per the monitoring guidelines of the FWC SAL and provide written reports of same to County within at least 15 days after each monitoring interval; at each monitoring interval, re-attach to reef substrate any observed detached outplants or fragments thereof, and perform any further requirements as may be set forth in any required permit or license;
11. Create and submit semi-annual monitoring reports (within at least 60 days after 6-12 month post-outplanting monitoring event) to the County and FWC in compliance with reporting requirements hereunder and under any applicable permits and licenses; For those semi-annual reports in which coral colonies or fragments are not outplanted, such semi-annual monitoring report shall document the health of the coral colonies or fragments in the coral nursery; and
12. Perform all tasks and work required under this Agreement in compliance with all applicable laws, permits, and licenses.

**Article IV – Grantee Quarterly Reporting Obligations:**

Grantee shall provide written quarterly progress reports. Quarterly reports are considered Project status reports and will address the progress made regarding the scope of work. In general, quarterly reports shall include summary information on the quantity and quality of *A. cervicornis* fragments harvested with a description and pictures of representative colonies based on the health status of each group, as well as condition, growth, and the current number of fragments in the nursery population related to this Project. The quarterly report shall include:

- the number of fragments harvested
- general location of each fragment harvested
- number of live corals left in-situ that are encountered
- scientific observation and justification of condition for fragments harvested
- description of resident environment where tissue was harvested
- photographic documentation of the entire process and representative photographs of each harvesting and outplanting activity which shall include no less than 1% of the relocated colonies.

Quarterly reports will also include planned activities for next quarter.

Quarterly reports are due according to the following schedule:

- January 1 – March 31 Reporting Period: due date April 30
- April 1 – June 30 Reporting Period: due date July 31
- July 1 – September 30 Reporting Period: due date October 31
- October 1 – December 31: due date January 31

If the Project start date falls within a defined quarterly monitoring period, the Grantee must report for that period by the given due date. This reporting schedule shall be repeated for the duration of the Grant period.

**Article V – Draw Request Procedures and Conditions; Milestone Schedule:**

Payments under this Agreement will be disbursed according to the Project milestones listed in Attachment A. Such disbursements will be within thirty (30) days of receipt of proper requests, which will include the required quarterly report with exception to the first annual start-up disbursement, which will be made within thirty (30) days of the execution of this Agreement by all parties.

**Article VI – Limitations of Agreement/Drawdown Conditions:**

The maximum amount of the Grant is \$499,974.00, which amount shall be distributed in accordance with the schedule in Attachment A, and subject to the conditions enumerated therein. By making this Agreement, the County assumes no liability or obligation whatsoever should Grantee fall in any of its responsibilities hereunder. In addition, the County assumes no obligation to provide financial support of any type whatsoever in excess of the total (Maximum) Grant Amount hereunder. Cost overruns incurred by the Grantee, the sub-grantee, or others are not the responsibility of the County hereunder or otherwise.

**Article VII - Agreement End Date:**

This initial term of this Agreement shall commence on the Effective Date and end on the third anniversary of the Effective Date ("Agreement End Date"), with one (1) option to renew or extend for a period of up to one (1) year. Any funds not encumbered by the end of Year 3, or for which a Project extension has not been requested, shall revert to the County Seaport Department and the Agreement shall be terminated. A Project extension may be requested in writing to the Director of the County Seaport Department (the "Director") at least thirty (30) business days prior to the end of Year 3. The Director, at his sole discretion, may contract an extension of up to one (1) year. Such extension, if granted, shall in no way commit the County to fund the Project in excess of the maximum Grant amount of \$499,974.00.

**Article VIII – Grantee Annual Reporting Obligations:**

To demonstrate that the Grantee has used the funds for the Project as approved, and has met and fulfilled all requirements as outlined in the Agreement and FWC permitting requirements, the Grantee has an obligation to submit annual reports to FWC. The County must be provided a copy of each annual report on the same date such report is submitted to FWC. The annual report must be submitted to the Director or his designee at the address provided in Article XVII.

**Article IX - Program Monitoring and Evaluation:**

The Director or his designee may monitor and conduct an evaluation of the Grantee's Project operations, which may include visits by County representatives to observe the r

26

Grantee's programs and procedures in connection with the Project, and the right to examine any directly pertinent books, documents, papers, and records of Grantee involving transactions related to this Agreement until the expiration of three years, or four years should an extension be granted after final payment hereunder. Grantee agrees to grant Director or his designee access to the Project site or any Project-related books, documents, papers, and records during normal business hours and upon reasonable notice.

**Article X - Accounting and Financial Review:**

The Grantee must keep accurate and complete books and records for all receipts and expenditures of this Grant award and any matching funds required in conformance with reasonable general accounting standards. These books and records, as well as all documents pertaining to payments received and made in conjunction with this Agreement, such as vouchers, bills, invoices, receipts and canceled checks, shall be retained in Miami-Dade County in a secure place and in an orderly fashion by the Grantee for at least two (2) years after the later of: the Agreement End Date specified in Article VII; the expiration of an extended Agreement period as approved by the Director; the completion of a County requested or mandated audit or compliance review; the conclusion of a legal action involving this Grant award, the Grantee and/or Project or activities related to the Grant award.

The Director or his designee may examine these books, records and documents at the Grantee's offices or other approved site under the direct control and supervision of the Grantee during regular business hours and upon reasonable notice.

**Article XI - Publicity and Credits:**

The Grantee and sub-recipient must include the following credit line in all promotional and marketing materials related to this Agreement including websites, news and press releases, public service announcements, broadcast media, event programs, and publications: "With the support of the Miami-Dade County Seaport Department, the Miami-Dade County Mayor and Board of County Commissioners." For radio or television broadcast, we require the following voice-over language: "This program is supported in part by the Miami-Dade County Seaport Department." For television broadcast, display of the County logo is required. The Grantee and any sub-recipient must also use the County's logo in marketing and publicity materials, including but not limited to newsletters, press releases, brochures, fliers, websites or any other materials for dissemination to the media or general public.

By accepting County funds, the Grantee and any sub-recipient are required to recognize and acknowledge Miami-Dade County's contract support in a manner commensurate with all contributors and sponsors of its activities at comparable dollar levels.

**Article XII - Liability and Indemnification:**

It is expressly understood and intended that the neither the Grantee, nor any employee, agent, nor subcontractor (of any tier), nor sub-recipient, as the recipient of these Grant funds, shall be deemed an officer, employee or agent of the County, its Board of County Commissioners, its Mayor, or the Miami Dade County Seaport. Further, for purposes of the Agreement and the Project, the parties hereto agree that the Grantee or sub-recipient, its officers, agents and employees are independent contractor.

The Grantee or sub-recipients shall take all actions as may be necessary to ensure that its

officers, agents, employees, assignees and/or subcontractors shall not act as nor give the appearance of that of an agent, servant, joint venturer, collaborator or partner of the Miami Dade County Seaport Department, the Miami-Dade County Mayor, the Miami-Dade County Board of County Commissioners, or its employees.

The Grantee agrees to be responsible for all work performed and all expenses incurred in connection with the Project. The Grantee may subcontract as necessary to perform the services set forth in the Agreement, including entering into subcontracts with vendors for services and commodities, provided that it is understood by the Grantee that the County shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract, and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

The Grantee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities for and from any and all liability, losses, claims, actions, suits, and damages, including attorneys' fees and costs of defense at all levels including appellate, which the County or its officers, employees, agents or instrumentalities may incur or be subject to as a result of claims, demands, law suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the Grantee or its employees, agents, servants, partners, principals or subcontractors (of any tier). The Grantee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the County, where applicable including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. The Grantee expressly understands and agrees that any insurance protection required by the Agreement or otherwise provided shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the County or its officers, employees, agents and instrumentalities as herein provided.

**Article XIII - Assignment:**

The Grantee is not permitted to assign this Agreement or any portion thereof. Any purported assignment will render this Agreement null and void and the Grantee shall be subject to immediate rescission of the full amount of the Grant award and reimbursement by the Grantee of its full value to the County.

**Article XIV - Compliance with Laws:**

It shall be a contractual obligation of the Grantee hereunder, that during the term of the Agreement, the Grantee agrees to abide by and be governed by all applicable federal, state and county laws and the terms of contracts made to the County and the Seaport Department, of which this Agreement is a sub-contract, including, but not limited to the following Miami-Dade County Ordinances, Resolutions, sections of the County Code and federal laws:

- a. County Ordinance No. 72-82 - Miami-Dade County's Conflict of Interest and Code of Ethics Ordinance - as amended, which is incorporated herein by reference as if fully set forth herein;
- b. Section 2-8.1- of the Miami-Dade County Code - Ownership Disclosure;
- c. County Ordinance No. 90-133- Amending Sec. 2-8.1; (d)(2) - Employment Disclosure;
- d. Section 2-8.6 -of the County Code - Criminal Record;
- e. County Ordinance No. 92-15 codified as Section 2-8.1.2 of the County

- Code - Employment Drug-free Workplace;
- f. County Ordinance No. 142-91 codified as Section 11A -29 et. seq. of the County Code – Family Leave;
- g. County Resolution R-385-95 - Miami-Dade County Disability Nondiscrimination Affidavit, incorporating the following Federal laws and Acts:
  - h. The Americans with Disabilities Act of 1990 (ADA), Pub.L. 101-336, 104 Stat. 327, 42 U.S.C.
  - i. 12101-12213 and 47 U.S.C. Sections 225 and 611 including Title I, Employment;
    - i. Title II, Public Services;
    - ii. Title III, Public Accommodation and Services Operated by Private Entities; and Section 504 of the Rehabilitation Act of 1973;
    - iii. Title IV, Telecommunications;
    - iv. Title V, Miscellaneous Provisions; The Rehabilitation Act of 1973, 29 U.S.C. Section 794; The Federal Transit Act, as amended 49 U.S.C. Section 1612; The Fair House Act as amended, 42
- j. U.S.C. Section 3601 - The foregoing requirements of this section shall not pertain to contracts with the United States or any department or agency thereof, or the State or any political subdivision or agency thereof or any municipality of this State;
- k. Section 2-8.1 (c) of the County Code regarding Delinquent and Currently Due Fees or Taxes

By accepting and executing this Agreement, Grantee is affirmatively certifying its compliance with these laws, ordinances and resolutions.

Further, all funded activities must provide equal access and equal opportunity in employment and services, and may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation or physical ability, in accordance with Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972 as amended (42 U.S.C. 2000d et seq.), the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and Miami-Dade County ordinances No. 97-170, § 1, 2-25-97 and No. 98-17, § 1, 12-1-98.

**Article XV - Remedies:**

In the event the Grantee shall fail to materially conform with any of the provisions of the Agreement or its attachments referenced herein, the Director may withhold or cancel all, or any, unpaid installments of the Grant upon giving five (5) calendar days written notice to the Grantee, and the County shall have no further obligation to the Grantee under this Agreement. Further, in the event of a material breach of any term or condition of the Agreement, upon five (5) calendar days written demand by the Director, the Grantee shall repay to Miami-Dade County all portions of the Grant which have been received by the Grantee, but which have not actually been used or disbursed by the Grantee as of the date that the written demand is received. Any funds which have been disbursed as of the date of the notice shall be paid back to the County within 60 calendar days of the notice.

Grant funds which are to be repaid to the County pursuant to this Section or other Sections in this Agreement, shall be delivered to the Director in the form of a certified check for the total amount due and payable to Miami-Dade County.

These provisions do not waive or preclude the County from pursuing any other remedy, which may be available to it under the law, this Agreement, at equity, or otherwise.

**Article XVI - Indulgence Will Not Be A Waiver of Breach:**

The indulgence of either party with regard to any breach or failure to perform any provision of the Agreement shall not be deemed to constitute a waiver of the provision or any portion of the Agreement either at the time the breach or failure occurs or at any time throughout the term of the Agreement.

**Article XVII - Written Notices:**

Any written notices required under the Agreement will become effective when delivered in person or upon the receipt of a certified letter addressed to Grantee: 1320 S. Dixie Highway, Suite 600, Coral Gables, FL 33146 Attn: Executive Director, Office of Research Administration; and to the Director at Miami-Dade County Seaport Department, 1015 North America Way, Suite 200, Miami, Florida 33132B.

**Article XVIII - Contract Represents Total Agreement:**

The Agreement, including its special conditions and attachments, represents the whole and total agreement of the parties. No representations, except those contained within the Agreement and its attachments, are to be considered in construing its terms. Other than as specified in this Agreement as delegated to the Director, no other modifications or amendments may be made to the Agreement unless made in writing, signed by both parties, and approved by appropriate action by the Miami-Dade County Board of County Commissioners and Mayor.

**Article XIX - Insurance:**

The Grantee must maintain and shall furnish prior to the execution of this Agreement and upon request of the Director or his designee, certificates of insurance indicating that insurance has been obtained which meets the requirements as outlined below:

1. Workers Compensation Insurance for all employees of the Grantee or sub-performing the work as required by Florida Statute 440.
2. Commercial General Liability Insurance in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.
3. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the project, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

The insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

1. The Company must be rated no less than "B" as to the management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division; or,
2. The Company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business

In Florida," Issued by the State of Florida Department of Insurance, and is a member of the Florida Guaranty Fund.

Certificates must indicate that no modification or change in insurance shall be made without thirty (30) days advance written notice to the certificate holder.

Modification or waiver of any of the aforementioned insurance requirements is subject to the approval of the County's Risk Management Division. The Grantee shall notify the County of any intended changes in insurance coverage, including any renewals of existing policies.

**Article XX – Use of Headings:**

Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Agreement.

**Article XXI – Legal Representation and Governing Law:**

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement. The terms of this Agreement shall be governed by, and construed in accordance with Florida law. The parties hereby agree to submit to the exclusive jurisdiction of the Eleventh Judicial Circuit in and for Miami-Dade County in order to settle any dispute which may arise out of, under, or in connection with this Agreement.

**Article XXII – Termination:**

If, for any reason, the Grantee shall fail to fulfill in a timely and proper manner its obligations under the Agreement, or should violate any of the covenants, agreements, or stipulations of the Agreement, the County shall thereupon have the right to terminate the Agreement by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. Grantee shall not be given disbursements for services not completed and shall reimburse the total value of any unspent funds already disbursed by the date indicated in the notice of termination. Miami-Dade County assumes no liability or obligation whatsoever should the Agreement be terminated for the reasons stated above.

**Article XXIII – Third Party Beneficiaries:**

There are no third-party beneficiaries to this Agreement. No other individual or entity has any right or obligation hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) below.

MIAMI -DADE COUNTY  
SEAPORT DEPARTMENT

UNIVERISTY OF MIAMI,

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

As approved by the Board on:

\_\_\_\_\_

Attest:

\_\_\_\_\_

Legal Review:

\_\_\_\_\_

County Attorney

32





# SIERRA CLUB

---

February 22, 2018  
Mr. Juan Kuryla  
Director, PortMiami  
Dante B. Fascell Port of Miami  
1015 North America Way, 2nd Floor  
Miami, Florida 33132

Re: Intentions of the Sierra Club Regarding Port of Miami Dredging Activities  
Dear Mr. Kuryla:

This letter is intended to convey Sierra Club's intentions regarding the Port of Miami deepening project, which was the subject of a notice letter dated July 16, 2014 sent to the U.S. Army Corps of Engineers, various agencies, and Miami-Dade County by the Sierra Club Miami Group, Miami-Dade County and Miami Waterkeeper, Tropical Audubon Society, Miami-Dade Reef-Guard Association, Dan Kipnis, and Coral Morphologic. The reassurance we offer in this letter is not a settlement agreement, a contract in its own right or otherwise legally binding. Rather, the attached release for legal claims that the Sierra Club is separately providing represents the furthest in that regard that national Sierra Club policy allows the organization to go. However, in the further interest of facilitating settlement between Miami-Dade County and Miami Waterkeeper, Tropical Audubon Society, Miami-Dade Reef-Guard Association, and Dan Kipnis (collectively "Plaintiffs"), and Coral Morphologic, however, we do wish to convey additional non-binding representations regarding the future intentions of the Sierra Club with respect to the Port of Miami deepening project.

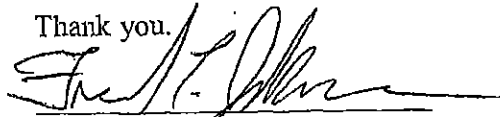
The Sierra Club has no intention of ever challenging the project in the future through the filing of federal or state court litigation, or in any other manner, including by submitting formal comments or testimony to any agency, filing appeals or requests for hearing, or participating in administrative hearings arising from, associated with, or relating to the federal lawsuit filed by the Plaintiffs, the Port of Miami deepening project or any portion of the performance thereof or any permit, license, mitigation or purportedly needed approval associated with the project, or any evaluation or analysis conducted in connection with the project or the permits already issued.

Please be aware that the Sierra Club is a large nonprofit organization comprising many volunteers, and we cannot control actions that our volunteers and members take in their individual capacities, and we have limited ability to control the activities of our volunteers in

their Sierra Club capacities. Accordingly, other than what is set forth in the formal release, we cannot provide a contractual commitment regarding the aforementioned intentions. We nevertheless are willing and intend to take appropriate steps to correct any actions that may be taken in the name of Sierra Club which are inconsistent with these intentions, promptly upon learning of any such actions.

Should you have any questions concerning the foregoing, please contact me at 727-824-8813, x302.

Thank you.



Frank Jackalone  
Sierra Club Senior Organizing  
Manager/ Florida Chapter  
Director

Attachment (Release)



# SIERRA CLUB

## RELEASE

WHEREAS, the County owns and operates the Dante B. Fascell Port of Miami-Dade ("Port" or "POM"); and

WHEREAS, in 2007, Congress authorized the Miami Harbor to be deepened to a depth of -52'-50' MLLW plus wave allowances and allowable over-depth (the "POM Deepening Project" or "Project"); and

WHEREAS, on or about July 16, 2014, Coral Morphologic, LLC, Sierra Club Miami Group, Miami Waterkeeper, Tropical Audubon Society, Miami-Dade Reef-Guard Association, and Dan Kipnis submitted a statutorily-required pre-suit Notice Letter to the U.S. Department of the Army Corps of Engineers ("COE"), Great Lakes Dredge and Dock Corporation, various agencies, and County, among others, threatening to seek injunctive relief under the Endangered Species Act ("ESA") and the Final Permit issued by the Florida Department of Environmental Protection ("DEP") if the COE failed to cease certain Project related dredging activities within sixty (60) days; and

WHEREAS, Miami Waterkeeper, Tropical Audubon Society, Miami-Dade Reef-Guard Association, and Dan Kipnis later filed a civil suit against the COE in federal court seeking preliminary and permanent injunctive relief alleging COE violations of the ESA and the DEP Final Permit; and

WHEREAS, Coral Morphologic and Sierra Club Miami Group did not join in the civil suit filed against the COE; and

WHEREAS, the COE, Miami Waterkeeper, Tropical Audubon Society, Miami-Dade Reef-Guard Association, and Dan Kipnis (through their counsel), and non-party County have participated in a court ordered mediation and now wish to settle their disputes; and

WHEREAS, Sierra Club is not a party to the settlement agreement reached between the COE, the County, Miami Waterkeeper, Tropical Audubon Society, Miami-Dade Reef-Guard Association, and Dan Kipnis but is entering into this Release in consideration of and to facilitate the parties' settlement;

NOW, THEREFORE, Sierra Club hereby agrees as follows:

### ARTICLE I: DEFINITIONS

1.1 Definitions. Except as specifically provided elsewhere herein, capitalized terms used herein shall have the meaning set forth below:

"County" shall mean Miami- Dade County, a political subdivision of the State of Florida.

"DEP" or "Department" shall mean the Florida Department of Environmental Protection.

"Federal Action" shall mean *Biscayne Bay Waterkeeper, Inc., Dan Kipnis, Miami-Dade Reef Guard Association, and Tropical Audubon Society, Inc. v. United States Army Corps of Engineers*, 14-civ-23632-FAM (S.D. Fla.).

"Final Permit" shall mean the final Permit and water quality certification waiver issued by DEP to the COE in connection with the Project.

"Project" shall have the meaning provided in the second recital paragraph of this Release and shall include all work and mitigation required, performed, or associated therewith.

"Sierra Club" shall mean the national Sierra Club, the Florida Chapter, and its Miami Group.


## ARTICLE II: RELEASE

2.1 Sierra Club hereby forever and irrevocably waives, discharges, extinguishes, and releases any and all claims set forth in the July 16, 2014 notice letter as well as any and all other existing claims, actions, suits, administrative challenges arising under Chapter 120, Florida Statutes, and appeals to federal or state courts, whether known or unknown, that could be brought in any federal court, state court, or the Florida Division of Administrative Hearings, arising from, associated with, or relating in any way to the Federal Action, the Project or any portion of the performance thereof, the Final Permit, or any other permit, license, mitigation or purportedly needed approval associated with the Project, or any Uniform Mitigation Assessment Method ("UMAM") or other evaluation or analysis conducted in connection with the Project or the Final Permit.

2.2 Sierra Club represents and warrants that it is authorized to enter into this Release and that it is duly and validly executed, legally binding and enforceable.

2.3 This Release will become effective on the date the Mayor or his designee signs the settlement agreement between the County and the plaintiffs in the Federal Action.

Dated this   7th   day of March, 2018.

  
\_\_\_\_\_  
Witness

Sierra Club

By: 

Frank Jackalone  
Sierra Club Senior Organizing Manager/ Florida Chapter  
Director